

No. 11-10192

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HASSAN ABPIKAR,

Defendant-Appellant.

**UNITED STATES' CONSOLIDATED MOTION OPPOSING
DEFENDANT'S SEVENTH EXTENSION REQUEST AND MOVING TO
DISMISS THIS APPEAL FOR FAILURE TO PROSECUTE**

Pursuant to Federal Rule of Appellate Procedure 31(c) and Ninth Circuit Rules 31-2.3 and 42-1, the United States hereby opposes defendant's seventh request for an extension of time and moves to dismiss this appeal because Hassan Abpikar has failed to file an opening brief as required by this Court's order.

1. Following a one week trial, a jury convicted defendant of two counts of falsifying and concealing a material fact in a matter before a government agency, in violation of 18 U.S.C. § 1001(a)(1), two counts of false statements

under oath relating to naturalization or citizenship, in violation of 18 U.S.C. § 1015(a), and two counts of perjury, in violation of 18 U.S.C. § 1621.

2. The district court sentenced defendant to 36 months' incarceration on April 11, 2011. Defendant filed a notice of appeal on April 13, 2011. Defendant has completed his imposed term of imprisonment.

3. On May 17, 2012, Erik G. Babcock was appointed CJA counsel for defendant. Since his appointment, Mr. Babcock has filed seven motions to extend the time in which to file his opening brief citing various and changing work obligations. Mr. Babcock has never contacted government counsel as required by Circuit Rules, *see* Ninth Circuit Rule 31-2.2(b)(6), to obtain counsel's position on his motions, and he has continued to ignore each of this Court's Orders reminding him of that requirement.

4. Defendant's most recent continuance request demonstrates a complete lack of due diligence in pursuing this appeal. Federal Rule of Appellate Procedure (FRAP) 31(c) provides that "[i]f an appellant fails to file a brief within the time provided by this rule . . . an appellee may move to dismiss the appeal." Ninth Circuit Rule 31-2.3 provides that "[i]f the appellant fails to file a brief within the time allowed by FRAP 31(a) or an extension thereof, the court may dismiss the

appeal pursuant to FRAP 31(c).” Ninth Circuit Rule 42-1 similarly provides that “[w]hen an appellant fails to . . . file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal.” As this Court explained in interpreting analogous provisions of Federal Rule of Criminal Procedure 48(b), “a court has the power to require the parties to proceed with diligence and meet deadlines established by court rule or order.” *United States v. Huntley*, 976 F.2d 1287, 1291 (9th Cir. 1992) (internal quotation marks and citation omitted). A court may sanction a party’s failure to meet briefing deadlines by dismissing the appeal for want of prosecution. *Id.*; see also *Orozco-Vasquez v. United States*, 344 F.2d 827, 828 (9th Cir. 1965) (appeal of one appellant which was abandoned was dismissed for lack of prosecution); *Barber v. American Sec. Bank*, 841 F.2d 1159, 1162 (D.C. Cir. 1988) (“Counsel’s failure to file his brief on time and failure to file the proper motions evidence inexcusable disregard for the rules of this court and thus warrant dismissal.”).

5. Defendant has failed to proceed with diligence and abide by this Court’s rules. He is thus in violation of Rule 31(c). Accordingly, this appeal

should be dismissed under Ninth Circuit Rule 42-1 for defendant's violation of the applicable rules and for want of prosecution.

DATED: October 31, 2013

Respectfully submitted,

MELINDA HAAG
United States Attorney

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s/ LAURIE KLOSTER GRAY
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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2013, I electronically filed the:

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with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.

s/ Tyle L. Doerr
TYLE L. DOERR
Appellate Paralegal Specialist